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bill may be filed in the suit for dower by one of the defendants, praying partition, under which such a sale may be had, the relief sought by the cross-bill being relief to which the parties were entitled and which could not be had under the original bill.

[Ed. Note.—For other cases, see Dower, Dec. Dig. § 78.\* 4 Va.-W. Va. Enc. Dig. 823; 10 Va.-W. Va. Enc. Dig. 789, 791.]

**4. Estoppel (§ 91\*)—Dower—Cross-Bill—Sale.**—A widow filed a bill in equity seeking sale of the property of her deceased husband and commutation of dower in place of the dower interest given to her by the will, and upon this bill process as to all parties was sufficiently made. A cross-bill was filed as to which the decree recited that the adult defendants appeared in court by counsel and waived their right of process, and that the cross-bill was taken for confessed as to them. The record showed that those defendants, either personally or by counsel, participated in the dower proceedings from commencement to conclusion, that they signed an agreement of sale under the terms of court, consented to the widow's commutation of dower out of the proceeds, accepted for themselves their own full shares of the proceeds, and that during 10 years they had not questioned the conclusiveness of the proceedings. Held that, even if counsel were not entitled, in the absence of special authority, to appear and waive process on the cross-bill, those parties were estopped by their subsequent conduct from taking advantage of any irregularities in the dower proceedings.

[Ed. Note.—For other cases, see Estoppel, Cent. Dig. §§ 257-259; Dec. Dig. § 91.\* 5 Va.-W. Va. Enc. Dig. 282.]

Appeal from Circuit Court, Rockingham County.

Action by Samuel Shacklett against Buford G. Shacklett's administrator and others, in which land was judicially sold to James M. Kavanaugh and another. From a decree confirming the sale, the purchasers appeal. Affirmed.

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SUTHERLAND et al. v. GENT et al.

Nov. 17, 1910.

[69 S. E. 340.]

**1. Equity (§ 447\*)—Bill of Review—Grounds—Newly Discovered Evidence.**—After the termination of a suit to enjoin defendants from cutting and removing timber from land, the court properly granted a bill of review on plaintiffs' application, based on affidavits of friends and neighbors of the parties to the suit, stating matters that would bring around a different result, which testimony he was unable to

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

secure for the trial because of affiants' desire not to get mixed up in the suit.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 1091-1094; Dec. Dig. § 447.\* 2 Va.-W. Va. Enc. Dig. 393.]

**2. Equity (§ 459\*)—Bill of Review—Injunction—Effect.**—Where a bill of review is filed to review a decree on the ground of newly discovered evidence, and a decree granting an injunction is entered thereon, all the issues in the original suit are set aside and left undetermined to await final action on the bill of review, and cannot be pleaded as *res judicata*.

[Ed. Note.—For other cases, see Equity, Dec. Dig. § 459.\*]

Appeal from Circuit Court, Russell County.

Suit by one Gent and another against W. H. Sutherland and others. From an order refusing to dissolve plaintiffs' injunction on the hearing of the bill of review, defendants appeal. Affirmed.

*W. W. Bird*, for appellants.

*Finney & Wilson*, for appellees.

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KREBS' EX'RS *v.* WELCH'S ADM'R.

Nov. 17, 1910:

[69 S. E. 346.]

**1. Covenants (§ 118\*)—Warranty of Title—Breach—Right to Sue—Evidence.**—In an action for breach of a covenant of warranty in a deed, plaintiff must establish by proof that he was the grantee, or assignee of the grantee, or of those claiming under him.

[Ed. Note.—For other cases, see Covenants, Cent. Dig. § 213; Dec. Dig. § 118.\* 3 Va.-W. Va. Enc. Dig. 771.]

**2. Evidence (§ 383\*)—Judicial Proceedings—Complete Record.**—To make a judgment or decree, without any other portion of the record, competent and sufficient evidence of a fact, it must satisfactorily establish the fact it is offered to prove.

[Ed. Note.—For other cases, see Evidence, Dec. Dig. § 383.\* 11 Va.-W. Va. Enc. Dig. 703.]

**3. Judgment (§ 682\*)—Conclusiveness—Against Persons Not Parties—Former Vendor.**—Defendants' testator conveyed Texas land to C. by warranty deed. C. died, and his heirs conveyed the land to claimant, who later instituted suit against them to recover the land, in which he obtained a judgment vesting the title in him. Thereafter a part of the land was recovered from claimant in trespass to try title by the heirs of B., whereupon claimant instituted proceedings

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.